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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6715 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GANPATRAM GORDHANJI MALI, since deceased, through his widow Narmadaben Ganpatram Mali.

Versus

MAMLATDAR DHANERA

Appearance:

MS KUSUM M SHAH for Petitioner
Ms. P.S.Parmar, A.G.P. for respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 05/10/96

ORAL JUDGEMENT

In this petition, the question that falls for determination is whether the Mamlatdar can order to remove the encroachment and levy the fine, 10 times of the assessment ?

2. Through the local limits of Dhanera taluka, river Sipu passes. The river bed land is useful for the purpose of growing potatoes. Every year, the river bed land is auctioned out and the persons bidding the highest are given the plots of land after due demarcation for cultivation and growing potatoes. On October 19, 1983 the Mamlatdar, Dhanera issued a notification for the auction of the river bed lands mentioning within the local limits of which villages the lands were situated. One of such villages was Rampura Mahudi. The petitioner and many others took part in the auction and for the land in question, the petitioner bid highest. He paid the auction price of Rs. 22,250/- to the Mamlatdar, as a result, Rampura Mahudi land admeasuring about 75 acres was allotted to him for one year, namely 1984-85 for cultivation and producing potatoes. The Mamlatdar, as well as the Executive Engineer, incharge of Sipu Irrigation scheme lateron found that the petitioner had also taking disadvantage encroached river bed land admeasuring 2 hectares 75 aare and 45 sq.mtrs. known as Nani Mahudi land. As the possession and use of that land were unauthorised, the Mamlatdar, considering the value of the products, and area of the land imposed a fine of ,Rs. 50670/-, equivalent to 10 times of the assessment of the land. In all under different heads, he called upon the petitioner to pay Rs. 71,577.60 ps. Being aggrieved by the order, the petitioner preferred a Revision Application before the Government. The same came to be rejected on 17th September, 1985 holding that the Executive Engineer, Sipu Dam Irrigation Scheme had no power to issue the notice and recover the amount, but certainly the Mamlatdar was having. As the order of the Mamlatdar was maintained, the present petition has been preferred challenging the validity and legality of that order qua the fine.

3. As per section 61 of the Bombay Land Revenue Code, if the person is unauthorisedly in occupation of the Goverment land, he can summarily be evicted. The Collector in his discretion and can also imposed the fine not exceeding Rs. 5/- or the sum equal to 10 the times' amount of assessment payable by him for one year. If the land has not been assessed, the amount of fine would be equivalent to such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land used for the same purpose. Such power vested in the Collector are also delegated to the Mamlatdar. If therefore, the person is in unauthorised possession and/or occupation of the Government land, it is open to the Mamlatdar to ask the person in illegal possession to vacate the same and also

impose the fine equal to 10 times of the assessment, if at all the land is assessed and if the land is not assessed, on the sum of assessment of similar land used for the same purpose in the village. It would now be proper to look at the facts and rival contentions.

4. The respondent found that the petitioner had taken disadvantage of the auction and allotment of the particular land made in his favour. The Mamlatdar for the purpose of auctioning out the river bed lands had issued the notification on 19.10.83, the copy of which is produced at Annexure "A," and auctioned out the lands situated within the local limits of villages Bhilda, Jhan, Bhadli Kotha, Rampura Mahudi etc. The petitioner's bid being the highest qua the land of Rampura Mahudi, was accepted. He then paid Rs. 22,250/- the auction price. He was then put into the possession of 75 acres of land of Rampura Mahudi for the purpose of cultivation and production of potatoes. For unlawful enrichment he lateron encroached upon the land of Nanik Mahudi which can be spelt out from the reply he filed pursuant to the notice he was served. The copy of his reply is produced at Annexure "F" on record wherein he has mentioned that he was under the impression that the land of Nani Mahudi was included in the land of Rampura Mahudi. He cultivated such belief because several times in past, when auctions were held, the land of Rampura Mahudi was auctioned out wherein the land of Nani Mahudi was also included. Because of such practice, he assumed that the land in question was also given to him for the purpose of cultivation and accordingly, he was cultivating Nani Mahudi land also and producing potatoes during the year in question. It has been therefore, contended on behalf of the respondents that the land of Rampura Mahudi and Nani Mahudi are different and not the same. In the notification dated 17.10.93 Annexure "A", Nani Mahudi is not mentioned and also in the certificate at Annexure "B" issued in favour of the petitioner, and therefore, the belief or assumption of the petitioner was without any basis, but trickily the petitioner in order to save his skin was wriggling.

5. When the petitioner believed that the land in question namely Nani Mahudi land was included in Rampura Mahudi land, it was incumbent upon him to produce necessary documents and other evidence to show that the land which was given to him after auction did include the land in question. Except his bare statement, nothing has been produced before me to show that the land in question has been included in the land of Rampura Mahudi village. In his statement recorded by the Mamlatdar, the copy of

which is produced at Annexure "H", the petitioner also made it clear that he would be producing relevant documentary evidence on the next date fixed, but he failed to produce necessary evidence indicating that the land in question was included in Rampura Mahudi land and therefore, whatever defence he raised was turned down and the order came to be passed. In that view of the matter, his bare statement cannot be accepted; on the contrary on the basis of above two documents, what can be deduced is that the land of Nani Mahudi is not the land of Rampura Mahudi, or is not at all included in Rampura Mahudi village. It is a different land for which no auction was held. However, the petitioner took possession thereof, started cultivating the same and producing potatoes. He was therefore, in unauthorised possession of the land. If that is so, the Mamlatdar in view of above stated law was perfectly right directing him to remove the encroachment and vacate the land and also in imposing the fine.

6. However, the fine imposed cannot be held to be just, reasonable and legal. It may be mentioned that the Mamlatdar imposed the fine 10 times of the production and not assessment as evidence about assessment was wanting. He therefore, assessed the value of production at Rs. 5067/- and considering 10 times thereof, he imposed the fine of Rs. 50670/-. To assess the fine, on the basis of the production value is not envisaged by section 61 of the Bombay Land Revenue Code, and so base for fine determination adopted is unjust. The authority could have tried to know the assessment of the land being the base. The river bed land is not at all assessed. When that is so, the assessment of similar land used for the similar purpose in the village ought to have been made the base. As the evidence in that regard is not produced before the Mamlatdar and nothing has been brought on record before me, for determining the assessment, I am left to have reasonable guesswork.

7. As has been stated in the order in question, the petitioner encroached upon the land having total area of 2 hectares 75 acres and 45 sq.mtrs. It would be round about 27545 sq.mtrs. of land i.e. 6.88 acres of land. Ordinarily, the land revenue of such area of the land would not be that high so as to justify the fine of Rs. 50670/- equal to 10 times of the assessment. In the absence of evidence regarding assessment of the likewise land in the village, I examined some of the copies of village form nos. 7 and 12 (Pani Patrak) and could see that for one acre of Bagayat land assessment was between Rs. 36/- to Rs. 40/- inclusive of other

cess. On average base if per acre of assessment is assumed to be Rs. 36/- for the whole of the land it would nearly come to Rs. 250/-. 10 times thereof would come to Rs. 2500/-. In this case therefore, the Mamlatdar ought to have to the maximum extent imposed the fine of Rs. 2500/- rather than exorbitant amount of Rs. 50670/-. The fine imposed by the Mamlatdar being unjust and exorbitant, requires to be reduced to Rs. 2500/-.

8. The petitioner has prayed for necessary relief qua the notice issued by the Executive Engineer, Sipu Dam Project and also his intention to recover the amount towards rent etc.. But that relief vide paras 13(B) and (D) would not now survive because while disposing of the Revision, the Secretary, Revenue Department has clearly held, and rightly so, that the Executive Engineer, Sipu Dam project was not at all authorised or empowered to issue a notice and claim the rent and other amounts. That claim of the respondents has been turned down. When that is so, the relief therein claimed vide above paras do not in fact, survive for consideration. The respondents also do not agitate the same claim the Executive Engineer once in past claimed issuing notice. When it is turned down in Revision, the same does not now survive.

9. For the aforesaid reasons, the petition requires to be partly allowed. The order of the Mamlatdar, Dhanera directing the petitioner to remove encroachment and vacate the land taking out all his belongings is maintained. But so far as it relates to imposition of fine of Rs. 50670/-, it is modified and instead of Rs. 59670/-, the petitioner is directed to pay the fine of Rs. 2530/- over and above other claims under different heads mentioned in the letter dated 29.4.1995, copy of which is produced at Annexure "J". It may be clarified that over and above the fine of Rs. 2530/- the petitioner shall have to pay Rs. 1170/- under the head of Education Cess, Rs. 5067.10 ps. under the head of production and Rs. 5067.10 ps. under the head of local funds. The petitioner shall make the payment within three months from today failing which the respondents will be free to recover the same as arrears of land revenue invoking relevant provisions thereof. No order as to costs. Rule made absolute to the above stated extent.

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